IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.40 OF 1993

The State of Maharashtra.
....Appellant.

Vs.

1. Arjun Dattaram Bhekare,
   Age 55 years.

2. Atmaram Arjun Bhekare,
   Age 26 years.

3. Santosh Arjun Bhekare,
   Age 19 years.

   All R/o. Pat-Panhale,
   Taluka- Guhagar,
   Dist. Ratnagiri.
....Respondents.

Ms. P.H. Kantharia, APP. for the Appellant-State.

Mr. Prakash Naik, Advocate for the Respondents-Accused.

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CORAM: R.M.S.KHANDEPARKAR &
R.S.MOHITE, JJ.

DATED: 6TH AUGUST,2004

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ORAL JUDGMENT : (PER R.S. MOHITE, J.)

1. This appeal is filed by the State of Maharashtra seeking to quash and set aside the Judgment and order

dated 6.11.1992 passed by the Sessions Judge, Ratnagiri in Sessions Case No.48 of 1992 acquitting the respondents (hereinafter referred as "Accused Nos. 1 to 3" respectively) from the charge under Section 302 read with Section 34 of the Indian Penal Code.

2. The brief facts of the prosecution case are as under:

a) That, the deceased Yeshwant Laxman Bhekere was the son of P.W.No.5-Laxmi Laxman Bhekare and he was residing alongwith Laxmi at Village Pet Panhale, Taluka Guhagar, Dist. Ratnagiri. That, on 25.12.1991 at about 7.30p.m. P.W.No.5-Laxmi Bhekare heard a cry "bay bay" and went towards that sound. When she reached the house of one Parvati Vishnu Bhekare she saw Accused No.1 Arjun, Accused No.2-Atmaram and Accused No.3-Santosh assaulting Yeshwant with ribs. Laxmi tried to intervene and made a request to the accused not to beat her son Yeshwant. However, all the accused dragged her and she fell down and suffered injuries on her knee and shoulder. In the mean while, P.W.No.6 Gangabai and P.W.No.7 Santosh arrived at the spot. Santosh was carrying a battery with him. In the light of battery and also in the light of bulb under the roof

of the hut of Parvati Vishnu Bhekare, P.W.No.6 and P.W.No.7 Gangabai and Santosh also saw the accused beating the deceased Yeshwant with wooden ribs. Gangabai and Santosh also saw P.W.No.5 Laxmi on the spot. On seeing Gangabai and Santosh accused abused and threatened them and therefore, these witnesses left the spot in fear of accused. P.W.No.5 Laxmi alone remained there with her injured son. Yeshwant died on the spot. Laxmi then went to her house.

b) P.W.No.2 Ramdas Chavan was the Police Patil of Village Pet-Panhale. He had stated that at about 8 or 8.30p.m. on 25.12.1991 accused No.1 came to his house in a frightened state of mind. He informed him that he and his two sons had killed Yeshwant Bhekare. Police Patil alongwith accused No.1 came to Bhekare wadi Mala which was the spot of the incident. They found that there was a bulb on the wooden pole in the padvi of Parvati Vishnu Bhekare. Since he found that the light was insufficient, he applied his torch and he saw that Yeshwant Bhekare was lying facing the sky in a pool of blood. He found injuries on the person of Yeshwant. The body was lying at a distance of 27 to 28ft. from the house of Parvati Vishnu Bhekare. He called at the house of Parvati Vishnu Bhekare but nobody opened the

door. He then went to the house of Parvati Bhekare. (In the evidence name Parvati Laxman Bhekare, instead of Laxmi Laxman Bhekare, was referred). He found that Parvati was crying. She disclosed to the Police Patil that Arjun and his two sons had killed Yeshwant by wooden ribs. He then carried Arjun -accused No.1 to Guhagar Police Station which was situated 4/5 K.M. away from the village. In the Police Station, P.W.No.8 P.S.I. Mhatre was present. The Police Patil informed the P.S.I. Shri. Mhatre that he had brought Arjun alongwith him. That Arjun had confessed him that he had killed Yeshwant Bhekare. The information given by the Police Patil was reduced into writing as the First Information Report (Exh.41) and on this basis C.R.No.79 of 1991 was registered by the police at Guhagar Police Station for an offence under Section 302 of the Indian Penal Code.

c) As the accused No.1 was also present in the police station, P.W.No.8 Bhaskar Mhatre arrested accused No.1 under panchanama (Exh.16). Under the same panchanama he seized the Articles 1, 2 and 3 which were the blood stained clothes and blood stained chappal belonging to accused No.1. P.W.No.8 P.S.I. Mhatre then informed Dy.S.P. Chiplun by a wire less message regarding the

registration of the offence. He came to Village Pet Panhale alongwith his staff and went to visit the spot of the offence. He arranged for keeping a police watch at the spot where the dead body of Yeshwant was lying, as it was night time. In the morning on 26.12.1991, at about 2.45a.m. he arrested the accused Nos. 2 and 3 under panchanama (Exh.17). He attached their clothes which were blood stained under the same panchanama and the clothes which were attached from accused No.2 Articles- 6, 7 and 8 before the court.

d) Thereafter, between 6.20a.m. to 7.a.m. on 26.12.1991, P.W.No.8 P.S.I. Mhatre prepared an inquest panchanama of the dead body of the deceased Yeshwant Bhekare (Exh.18). He noticed in all 18 wounds on the dead body. Thereafter, he arranged to send the dead body for post mortem. He then prepared the scene of offence panchanama (Exh.19) and from the scene of the offence he seized one leather chappal lying there. On the same day, he recorded the statements of three witnesses namely Parvati Vishnu Bhekare, Gangabai Shivram Bhekare and Santosh Vishnu Bhekare. He then arranged to send the injured mother of the deceased Laxmi to the Government Hospital for clinical examination and treatment. On 26.12.1991 all the

accused showed their willingness to show the wooden ribs used in the crime. He therefore, recorded a memorandum panchanama which appears to be a joint memorandum of accused Nos. 2 and 3 (Exh.20). Thereafter, accused persons led the police to Bhekare wadi near the house of Shivram Bhekare and accused produced wooden ribs from behind the bushes near the house of Shivram Bhekare. Same were attached under a panchanama (Exh.20A). Articles 9 to 12 were the same wooden ribs which have been used as weapons in the crime and which were attached under the said panchanama. Thereafter, on 26.12.1991 between 12.05 to 12.25p.m. the clothes of the deceased were produced by Head Constable Sashe from the hospital and were attached under panchanama (Exh.24). These clothes of the accused were Articles 15 to 19 before the court.

e) Thereafter, at about 1.00p.m. the Deputy Superintendent of Police (P.W.No.9) Anand Mandya came to Guhagar and took over the charge of the investigation. During the investigation, he recorded the statements of Laxmibai Laxman Bhekare, Gangabai Ganpat Bhekare and others on 26.12.1991. He attached the battery torch which was produced by Gangabai Ganpat Bhekare in the presence of two panchas. This

panchanama was drawn between 1.30 to 2.00p.m. On that very day, at about 4.00 p.m. he attached sample wooden rib from a heap of ribs lying near the house of Shivram Soma Bhekare under panchanama (Exh.21). The sample wooden rib was produced as Article-21 before the Trial Court.

f) On 9.1.1992, P.W.No.9-Anand Mandya, the Investigating Officer received the Medical Certificate in respect of the clinical examination of the injured Laxmi Laxman Bhekare. On the same day, he sent articles attached to the Chemical Analyser for chemical analysis. He received C.A. report and thereafter, he filed the charge-sheet against all the three accused persons on 27.3.1992 in the court of J.M.F.C. Chiplun.

3) After the case was committed to the Court of Sessions, the Trial Court framed the charge against the accused persons under Section 302 read with 34, Section 504 read with Section 34 and Section 506 read with Section 34 of the Indian Penal Code. During the Trial, the prosecution examined as many as nine witnesses to prove its case. Amongst these, three were eye witnesses i.e. P.W.No.5-Laxmibai, P.W.No.6-Gangabai and P.W.No.7-Santosh. P.W.No.2 Ramdas Chavan who was

the Police Patil was examined by the prosecution to prove the extra judicial confession said to have been made by the accused Arjun at about 8.00p.m. on 25.12.1991. P.W.No.3- Sudhakar Pandurang Chavan was examined as a panch on the joint recovery and the two panchanamas of memorandum and discovery were proved through this witness and exhibited as (Exh.20) and Exh.(20A) respectively. P.W.No.4 -Naresh Waman Dhamankar was examined as a panch witness in respect of the panchanama under which the clothes of the deceased were seized. P.W.No.1 Dr. Subhash P. Jawalagikar was the doctor through whom the prosecution proved the post mortem notes. He was the same doctor who had also examined injuries caused to P.W.No.5 Laxmi. He proved injury certificate issued by him to P.W.No.5 Laxmibai (Exh.12). The prosecution also examined two Investigating Officers i.e. P.W.No.8 P.S.I. Bhaskar Mhatre and P.W.No.9- Deputy Superintendent of Police Anand Mandya. The prosecution also proved the C.A. report (Exh.40) and also other relevant documents.

4) So far as the defence of the accused was concerned though in their Statements under Section 313 of Criminal Procedure Code, there was no positive case put up by the accused, yet from the suggestions made in the

cross examination to the witnesses, it appears to have been the defence case that the three accused had gone to Guhagar and when they were coming back they came across a person lying on the ground. They identified him as Yeshwant who appeared to be injured. They tried to lift him for reaching him to his house and that after having found him dead they threw him down and thereafter, accused Arjun went to the Police Patil to inform him that Yeshwant was lying dead and accused Nos. 2 and 3 went to their home.

5) After considering the evidence led by the prosecution and the statements recorded under Section 313 of the Criminal Procedure Code, for the reasons mentioned in the Judgment, the Trial Court acquitted all the accused from the charges which has led the State to file the present Criminal Appeal. We have heard the learned Advocate for the accused and the learned A.P.P. and perused the record.

6) Firstly, it is necessary to deal with the prosecution case as has been unfolded through the evidence of the three eye witnesses P.W.No.5 Laxmibai, P.W.No.6 Gangabai and P.W.No.7 Santosh.

7) P.W.No.5 Laxmibai stated in her evidence that she was the mother of the deceased Yeshwant. That, on the day of the incident i.e. 25.12.1991 at about 7.30p.m. he heard cry "bay bay" and so she went towards that sound. She reached in front of the house of Parvati Vishnu Bhekare. She saw accused Nos. 1 to 3 assaulting her son with ribs. She tried to intervene but all the accused pushed her and therefore, she fell down and received injuries on her knee and shoulder. In the mean while P.W.No.6 Gangabai and P.W.No.7 Santosh came to the spot. They were having a battery with them. However, since they were threatened by the accused, they left the spot. She remained there. Deceased Yeshwant was lying in a pool of blood. She stayed there for some time and then left the spot. Yeshwant was lying on the spot. After some time Police Patil came to her house for making an enquiry. She informed him the names of the assailants. He then went away. On the next day morning she was sent for medical examination. She did not know why Yeshwant was killed. In her cross examination she interalia stated that she did not know whether during the life time of Yeshwant there was any talk in the wadi that Yeshwant was maintaining illicit relations with the ladies of their wadi. She did not know whether villagers had made any

such complaints to the Police Patil. She stated that though there were complaints of the villagers, nobody had caught Yeshwant red handed. She denied that her son Yeshwant indulged in such activities. She stated that the accused persons were residing at a distance of 100 paces from her house. She stated that height of the roof of the house of Parvati was about 4ft. from the ground and the night bulb was below the roof in a hanging condition. That, the power of the bulb was of low wattage. That the distance of the spot of incident was 50 paces from the eastern border of the courtyard of the house of Parvati Vishnu Bhekare. That, on hearing the shouts of her son Yeshwant, she must have crossed 50-paces till she reached the spot from where she witnessed the incident. She stated that the entire incident of assault lasted for 30 minutes. She stated that she had disclosed the names of all the three accused to the Police Patil. She denied that she did not hear the shouts of her son Yeshwant. She denied that while reaching the spot alongwith Police Patil, she fell down and sustained injuries. She stated that her age was about 70 to 75 years. She admitted that she has not specifically stated in her police statement that Santosh was carrying a torch. She further specifically stated that Gangabai and Santosh were

given threats by the accused. She further admitted that she had not disclosed in the police statement that she had disclosed the names of the accused to the police patil. The defence version stated above was put to this witness. She denied that due to darkness at the spot of the incident, nobody has noticed anything on the spot. She denied that she was not present near the actual spot of the incident. She denied that Yeshwant was killed by somebody else due to previous enmity caused by his immoral character.

8. The second eye witness P.W.No.6 Gangabai stated in her evidence that on the day of the incident at about 7.30p.m., she heard the cry of the deceased Yeshwant "bay bay Mala Vachava". She came out of her house alongwith her son Santosh and went to the spot of incident with a torch. Torch was being carried out by her son Santosh. They came in front of the court yard of the house of Vishnu Bhekare. She saw that Arjun and his sons Atmaram and Santosh were beating Yeshwant by wooden ribs. The mother of Yeshwant was present there and was trying to save her son Yeshwant by intervening. She took the torch from Santosh and lit it. At that time accused Santosh abused them and asked them as to

why they had lit the torch. She was also threatened by accused Santosh. P.W.No.6 Gangabai and P.W.7 Santosh then went back to their house. Subsequently, during the investigation, the police attached the said battery and she identified the accused and the battery torch which has been used by her for witnessing the incident. In her cross examination she stated that after hearing the cries of the deceased she had crossed a distance of 100 paces to reach the spot of the incident. When she heard the shouts she was cooking food in the kitchen. She further stated that the battery torch was purchased in Bombay prior to one year. She and P.W.No..5 Laxmibai were at the same distance from the spot of incident. That they immediately returned from the spot because of the threats. She further deposed that it was possible to see the spot of incident though there was darkness. She denied that she could not see the spot because of long distance. She denied that she and her son Santosh did not go to the spot of incident with a battery torch and did not witness the incident. She admitted that she had not specifically told the police that she had taken the battery torch in her hands from the hands of her son Santosh. She admitted that she has not stated in her police statement that Santosh had abused them when they lit the battery torch. She

admitted that her husband Ganpat and the deceased Yeshwant were distant cousin brothers. She denied that she was deposing falsely because she was related to Yeshwant.

9. P.W.No.7 Santosh Ganpat Bhekare the third eye witness and the son of P.W.No.6 Gangabai stated that he witnessed the incident. He further stated that on the day of the incident at about 7.30p.m,. he and his mother were in their house. At that time they heard the shouts "bay-bay". Hence, he and his mother went to the spot of incident with a battery torch. He came to the spot and saw in the light of the battery torch that the three accused Arjun, Atmaram and Santosh were beating Yeshwant with wooden ribs. The mother of the deceased Yeshwant was present there. The accused No.3 abused them for lighting the battery torch and therefore, he and his mother left the spot and went to his house. In the cross examination, he has stated that the said torch had been purchased about 4 years back. He admitted that on hearing the shouts, he and his mother did not raise a hue and cry. He denied that he raised shouts and as it was dark, it was not possible to see or identify any person on the road. He admitted that there were other houses of Bhekare near

the house of Vishnu Bhekare. He stated that he had witnessed the incident. He further deposed that initially he was holding the torch and then it was taken by his mother. He denied that he and his mother had never gone to the spot of incident. He denied that he was deposing falsely because of his relationship with the deceased Yeshwant.

10. The submissions made by the defence can be stated as under:

a) That, none of the eye witness could have seen the assault because there was no sufficient light at the place where Yeshwant was alleged to have been assaulted. In this regard reliance was placed on the evidence of P.W.No.2 Police Patil Ramdas Gangaram Chavan who had stated that when he arrived at the spot he found that the bulb on the wooden pole of Padvi was giving insufficient light. He was having a torch and he lit the torch and in the light of torch he saw that Yeshwant Bhekare was lying facing the sky in a pool of blood. He had further pointed out that witnesses P.W.No.6 and 7 were also required to take a torch which was further indication of the fact that there was

insufficient light. In this regard he further contended that P.W.No.5 had admitted in her cross examination that the height of the roof of the padvi of Parvati was 4ft. and the light bulb was below the roof in a hanging condition and that the power of the bulb was of low wattage.

b) It was then contended that the entire evidence relating to witnesses P.W.No.6-Gangabai and P.W.No.7 Santosh shows that they had seen the incident in the light of a torch and the same should be disbelieved because the evidence relating to the production of the torch had infirmities. He contended that the panchanama dated 26.12.1991 (Exh.22)_ under which the said torch was produced and seized indicated that the panchas were called in front of the house of Parvati Vishnu Behkare and were informed that Gangabai Bhekare who had witnessed the incident was producing the torch with which she had seen the accused. It was at this stage that the torch was produced. It was contended that the evidence of P.W.No.6 Gangabai was contrary to the version as contained in the panchanama since she has not categorically stated that the torch was seized. That, if the torch was in her own house, normally the

police would have seized the torch from her own house.

c) That P.W. No.6 Gangabai had omitted to state in her police statement that she had taken the battery torch from the house and it was in the hand of her son Santosh and she had further omitted to state in her police statement that the accused had threatened on the occasion of her lighting the torch.

d) The prosecution had not examined any independent witness from the locality though there were an admissions from the witnesses that there were other houses situated at a distance of about 40 to 50 paces from the place of the crime. That from the evidence, it was revealed that all the three witnesses were related to deceased and they were interested witnesses.

e) Though the evidence of Laxmi showed that she had disclosed the names of the assailants to the Police Patil, P.W.No.2 Ramdas Chavan had not corroborated the evidence of P.W.No.5 who but had in fact stated that the enquiry was made by him from Parvati Bhekare.

11. On the aforesaid contentions of the defence, the reply of the prosecution was that merely because the

three eye witnesses were related to the deceased Yeshwant, that by itself would not be sufficient ground to discard their evidence. At the highest their evidence could be carefully scrutinized. The record indicated that there was sufficient light at the spot of the incident. In this regard, it could not be forgotten that the accused were residents of the same village, residing 200-paces from the house of the deceased. That, even assuming that the bulb at the spot of incident was dim and some of the eye witnesses had in fact used a torch, that by itself could not lead to the conclusion that there was insufficient light to notice the incident.

12. The prosecution then contended that the omissions in the evidence of P.W. Nos. 5 and 6 were absolutely minor and irrelevant and were not in the nature of material contradictions. It was contended that the evidence of Laxmi was corroborated by several circumstances including the injuries suffered by her. That, though the Police Patil had stated that Parvati Laxman Bhekare had disclosed the names of the assailants when he came to the house of Parvati, P.W. No.5 Laxmi who had stated that she had disclosed the names of the accused to him was an alias for Parvati.

13. After analysing the evidence of the eye witnesses, it is apparent that P.W.No.5 Laxmi Bhekare was the mother of the deceased Yeshwant. In that sense she may be an interested witness, yet this fact alone cannot be a pround for totally discarding her evidence. The law relating to interested witnesses is that their evidence is required to be scrutinized with care and caution. It cannot be said that the presence of P.W.No.5 was unnatural. The record states that the house of P.W.No.5 Laxmi was situated at a distance of 200-paces from the spot of the incident and that is not a very long distance. The shouts in the evening time in the village and a cry for help can easily be heard from the distance of 200ft. She claims to have come to the spot of the incident on hearing the cries for help given by her son Yeshwant. The fact that Laxmi had came to the spot and her version as to what happened there is independently corroborated by several other witnesses. Her presence at the spot is expressly deposed to by other witnesses P.W.No.6 Gangabai, P.W.No.7 Santosh. These witnesses also corroborate her evidence that she was trying to save her son. Laxmi stated that when she was trying to free her son, she was dragged by the accused and therefore, she fell down whereby she

received injuries on her knee and shoulder. The fact that this witness received such injuries is corroborated by other evidence on record. P.W.No.8 P.S.I. Bhaskar Mhatre has stated in his evidence that when he arrived at the spot on 26.12.1991 during investigation he found that Laxmi-the mother of the deceased had suffered injuries and she was required to sent for medical examination to Government Hospital, Guhagar. The injuries sustained to P.W.No.5 Laxmi were then stated by Dr. S.P. Jawalagikar. He stated that when he examined injured Laxmi at about 10.30a.m. on 26.12.91, he found two injuries on her person. They are described as under :

1) Contusion with abrasion size 2cms. x2 cms. on right shoulder.

2) Contusion 3CMs. x2 cms. on left knee joint.

He opined that both the injuries were simple and could be caused due to a hard and blunt object.

14. The Medical Certificate (Exh.12) issued by him was proved by the prosecution and the same also corroborated the evidence given by him. The said

certificate indicated that the injuries had been caused within 24-hours. This evidence specifically corroborated the evidence of P.W.No.5 Laxmi and helps in establishing that her version is true. The evidence of P.W.No.5 Laxmi to that effect that she narrated the names of the assailants to the Police Patil when he visited her house is clearly corroborated by P.W.No.2 Ramdas Chavan. The evidence of P.W.No.2 discloses that Parvati Laxman Bhekare was residing with Yeshwant. When he visited the house of Parvati, she told him that Arjun and his two sons killed Yeshwant by wooden ribs. It must be remembered that, P.W.No.2 Ramdas Chavan had lodged the F.I.R. (Exh.14). A glance of the F.I.R. would also indicate that this witness had categorically stated in the F.I.R. that Parvati Laxman Bhekare was the mother of Yeshwant. The F.I.R. further discloses that she had stated therein that her son Yeshwant was killed by Arjun, Atmaram and Santosh with wooden ribs. P.W.No.5 Laxmi claims to be the mother of the deceased Yeshwant. As Yeshwant cannot have two mothers, it obvious that P.W.No.5 Laxmi is Parvati Laxman Bhekare referred to in his evidence by Ramdas Chavan. Hence, there is corroboration as regards the disclosure made by Laxmi.

15. P.W.No.6 Gangabai and P.W.No.7 Santosh are the other two eye witnesses who also support the story given by P.W.No.5 Laxmi. They assert to have seen the accused persons assaulting the deceased Yeshwant. In our view the discrepancies in their evidence as to when the torch was purchased is of little value or relevance. Similarly, the omission in the statement of P.W.No.6 Gangabai to the effect that she had omitted to state before the police about her taking the torch from her son is also too minor and does not amount to a material contradiction. Laxmi, Gangabai and Santosh are rustic witnesses from the village. The defence has not brought on record any reason as to why these witnesses would falsely implicate the accused.

16. As regards the ability of these witnesses to see the entire incident in the light available, a reference to the scene of offence panchanama which sheds light on the nature of lighting available on the spot of the evidence would be useful. It is mentioned in the scene of offence panchanama that the spot of the incident was in front of the padvi of Parvati Vishnu. The place of offence was at a distance of 28ft. on the east side from the court yard of the house of Parvati Vishnu.

That the place of offence was the place where deceased Yeshwant was beaten and the dead body was lying. It is further mentioned that in the middle of the padvi of the house of Parvati Vishnu Bhekare and electric bulb of 100 watts was fixed on a wooden pole. Parvati Vishnu Bhekare was present in person and was made to switch on the bulb to ascertain that the bulb was in a working condition. In our view, taking into account the fact that the accused and eye witnesses are from the same village residing at a short distance from each other and light from a 100 watts bulb was available, it cannot be said that the light was insufficient to witness the incident and identify the assailants. In our view the evidence of these witnesses is clear, cogent, acceptable and corroborated by several other circumstances and can form the basis of conviction.

17. The second clinching circumstance against the accused is an extra judicial confession made by accused No.1 to the Police Patil- Ramdas Chavan. In his evidence the Police Patil stated that when he was at his house at about 8.00 or 8.30p.m. accused No.1 came to his house. He was in a frightened condition. Accused Arjun informed that he had killed Yeshwant Bhekare. When he made a further enquiry from accused

No.1 Arjun, he told him that he and his two sons had killed the deceased Yeshwant Bhekare. They then proceeded towards the spot at Bhekarewadi Mala. This version given by the police patil is completely corroborated by his own F.I.R.(Exh.14). In the F.I.R., it is mentioned that at about 8.30p.m. accused No.1-Arjun came to the house of police patil in a frightened condition and told him that before a short time, at about 7.30p.m. he and his sons Santosh and Atmaram had killed Yeshwant. That the Police Patil asked him as to why they had beaten Yeshwant. Accused No.1 told the Police Patil that Yeshwant always used to practice witchcraft on them and therefore, illness had entered into their house and their daughter-in-law had become ill due to such witchcraft and therefore, in disgust he had killed Yeshwant in front of the house of Parvati. The fact that this extra judicial confession was immediately mentioned by Ramdas Chavan in his F.I.R. is also corroborated by P.W.No.8 the police officer who affirmed that he recorded the story as given by the Police Patil in the F.I.R. (Exh.14). The fact that accused No.1 came alongwith Police Patil-P.W.No.2 is also indicative of the fact that the accused No.1 had in fact gone to the house of the Police Patil. In fact, in his statement under Section

313 of Criminal Procedure Code, this fact is categorically admitted by accused No..1 Arjun. In reply to the question as to whether he was produced at the police station by P.W.No.2 Ramdas Chavan and that the complaint (Exh.14) was lodged by Ramdas, the witness stated that it was true. He also admitted that at the police station his chappal pair, his khaki half pant and full shirt of blue colour stained with blood stains were seized under the panchanama Exh.16. In his 313 Statement he further admitted that after Laxmi waited at the spot for some time, she went to her house and Police Patil came over there after sometime. He denied the actual confession said to have been made to P.W.No.2 Ramdas Chavan but did not specifically, state that he had only told Ramdas Chavan that he had found Yeshwant dead on the spot.

18. It appears to us that the aforesaid evidence relating to the extra judicial confession has been discarded by the Trial Court on the ground that the said confession was hit by Section 25 of the Indian Evidence Act. For coming to this conclusion, the Trial Court has relied upon the Judgment of the Bombay High Court reported in the case **Alluri Ramayya Vs. State of Maharashtra reported in 1987 CRI. L.J.1172.** In that

case the concession was made by an accused in the presence of crowd. The Police Patil was also present in the crowd. A Division Bench of this court held that the said confession was not hit by Section 25 though Police Patil was a police officer under the Indian Evidence Act. This was so held by the Division Bench on this footing that the word "to" occurring in Section 25 could not be read as "In presence of". On perusal of the Judgment it is found that the proposition as to whether Police Patil appointed under the Maharashtra Village Panchayat Act can be said to be a Police Officer within the meaning of Section 25 of the Indian Evidence Act, was not in issue as it was not disputed before the Division Bench. In our view, in the absence of any such dispute the court made a reference to the fact that the proposition was not disputed. This by itself could not be said to be a conclusive decision on the point. In any case, the matter is covered by a subsequent Judgment of the Apex Court in the case of **Raj Kumar Karwal Vs. Union of India and ors reported in A.I.R.1991 S.C.45.** The issue involved is directly dealt with by the Apex Court in the following terms.

> "We therefore, agree that as Section 25 of Evidence Act which engrafts a wholesome

protection it must not be construed in a narrow and technical sense but must be understood in a broad and popular sense. But at the same time it cannot be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred within the category of police officers".

"The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet under Section 173 of the Code. That is why this court has since the decision in Badku Joti Savant (A.I.R.1966 S.C. 1746) accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code, including the power to submit a report under Section 173, he cannot be described to be a Police Officer' under Section 25 , Evidence Act".

19. We have gone through the provisions of the Bombay

Village Panchayat Act as well as Criminal Procedure Code. It is clear that the Police Patil of the village has no power to file a report under Section 173 of the Criminal Procedure Code and therefore, is not a Police Officer within the meaning of Section 25 of the Evidence Act. A judicial confession made by accused No.1 to P.W.No.2 Ramdas Section-2(a) is therefore relevant and the said extra judicial confession would assume importance. We do not find anything unbelievable in the evidence relating to the making of such a confession. Nothing has been elicited on the record as to why P.W.No.2 Ramdas Chavan would falsely involve the accused and his sons. On the contrary in his 313 Statement, accused No.1 candidly admitted that he cannot state as to why P.W.No.2 Ramdas Chavan was deposing against him.

20. One other circumstance against the accused is the finding of blood stains on the clothes of the accused. This is evident from the C.A.'s report. The blood group found on the articles of all the accused is blood group A. This is also the blood group found on the clothes of the deceased. In an obvious attempt to meet this glaring circumstance, suggestions were made to the eye witnesses stating that they accidently came across

the injured Yeshwant and they attempted to lift him for the purpose of reaching him to his house and that on finding that Yeshwant was dead they threw him down. This defence story appears to be false. Firstly this story is not given by the accused in their Section 313 Statement. Secondly, if at all the accused were innocent then confessional statement would not have been made by accused No.1 to P.W.No.2-Police Patil. The accused No.1 was present in the police station when Exh.14 was recorded and which contained his confession to the killing Yeshwant by his two children.

21. The Trial Court discarded the evidence relating to the discovery of weapons. This evidence was discarded on the ground that a collective statement in the form of the memorandum had been recorded under Section 27 of the Indian Evidence Act. For this purpose, the Trial Court placed reliance on the Judgment of the Apex Court reported in **A.I.R. 1983 S.C. Page 367 (Mohd. Abdul Hafeez Vs. State of Andhara Pradesh).**

22. In the aforesaid case, the Apex Court while dealing with the manner in which the recovery statement under Section 27 of the Indian Evidence Act is to be recorded observed as under :

> "If evidence otherwise confessional in character is admissible under Section 27 it is obligatory upon the investigating officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

In the case before the Apex Court, accused No.2 and accused No.3 in that case, gave information to the Investigating Officer that a ring was sold by them to a jeweller. The Jeweller in the case was examined as a witness and he deposed that accused Nos. 1 to 4, whom he identified in the court came to his shop and sold the ring to him. He further stated that later a Police Officer and some constables accompanied by accused Nos. 1 to 3 came to his shop and accused Nos. 1 to 3 asked him to produce the said ring which they had sold to him. On this request made by accused Nos. 1 to 3, the

said jeweller took out a ring from show case and placed it on the box and the same was attached by the Sub Inspector of Police.

23. In our view the aforesaid Judgment of the Apex Court does not lay down the law to the effect that a joint memorandum would make the consequent discovery totally inadmissible in evidence in each and every case. The said ruling of the Apex Court has to be understood in the light of the facts of the case before the Apex Court.

24. Section 27 of the Indian Evidence Act is in the following terms:

> **"How much of information received from accused may be proved. 27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".**

No doubt, it may be possible that in given case two accused may make similar statements one after another and the police officer may then reduce the same to a common memorandum statement signed by both these accused. This procedure is obviously undesirable because it has the disadvantage of not recording the statement of each of the accused in the exact terms as may have been stated by them. This would made the discovery evidence less reliable and thus evidence of lessor probative value though not completely inadmissible. In the present case, the evidence relating to the discovery indicates that the statements were made by the accused to the police officer one after another but a joint memorandum was recorded. Here lies the basic difference between the case in hand and the one before the Apex Court in the matter of Mohd. Abdul Hafeez. Therein the evidence was that "one accused alongwith all others gave information". Whereas in the case in hand the statements of accused were one after another and not alongwith the other accused. Ribs discovered were found having blood stains and the Chemical Analyser’s report established the blood group found on the clothes in pursuance of

this memorandum statement had the blood group of the deceased thereon. Weak as this circumstance might be because of the procedural lapse in the recording of a joint memorandum, this circumstance also supports the prosecution case and corroborates the evidence of the eye witnesses.

25. It was lastly contended by the defence that the conviction should be under Section 304 Part I or II of the Indian Penal Code. We find that there is no mitigating circumstance to bring this case in one of the said exceptions to Section 300 of the Indian Penal Code. The evidence of the doctor indicates that the injuries found on the deceased were as follows :

1. Contusion with laceration on left leg lateral aspect middle third 2"x1/2"x1/2".

2. Contusion with laceration on left leg 1" above wound No.1 on lateral aspect 1"x1/2"x1/2".

3. Contusion and laceration on right leg middle third lateral aspect 2"x1"x1".

4. Contusion and laceration on right leg 1" below injury No.3 on lateral aspect 2"x1/"x1/2".

5. Contusion on right leg 1" below of laceration of wound No.4 on lateral aspect 1"x2"x1/2".".

6. Contusion with laceration on left forearm about 1" above palm 2"x1/2"x1/2".

7. Contusion with laceration over lower jaw mandible 2"x1"x1".

8. Contusion with laceration on face, Erin, compound fracture mandible lower jaw 1"x1"x1".

9. Contusion with laceration face right mandible lower jaw compound fracture 2"x1"x1".

10. Contusion with laceration on face left side 1" lateral to left eye 2"x1/2"x1/2".

11. Contusion with laceration on scalp 1cm.

behind left ear truneverag 2"x1/2"x1/2".

12. Contusion with laceration on over scalp temporal area above left ear transverse 3"x1/2"x1/2".

13. Contusion with laceration on scalp, occipital vertical 1" below left partial eminence 2"x1/2"x1/2".

14. Contusion on face, bridge none 1/2"x1/2".

He found that all the injuries were antemortem and caused by a hard and blunt object. Doctor further opined that there was an internal haematoma below the left temporal area and brain matter found congested. He opined that the death might have been caused due to shock, due to severe haemorrhage and due to multiple fracture of the mandible. He further opined that Injury Nos. 7,8,9 and 14 were sufficient in the ordinary course to cause death. Apart from the doctor’s evidence, a bare look on the nature of the injuries indicates the lethal intention of the assailants. We have seen the wooden ribs. They are

deadly weapons with which very severe injuries can be caused and they are clearly in the nature of dangerous weapons. Since, there is no mitigating factor to bring the accused under Section 304 of the Indian Penal Code, we find that the appeal of the State will have to be allowed in so far as the charge under Section 302 read with 34 of the I.P.C. is concerned. In so far as other charges pertaining to Sections-504 and 506 read with 34 of the Indian Penal Code are concerned, the evidence is vague. There is no uniformity about the nature of the abuses given. It also appears that there were no threats of causing grievous injury to the witnesses or to kill them. We find only a case made out for a conviction under Section 302 of the Indian Penal Code. The net result is that the appeal is partly allowed. The acquittal of the accused for the offences charged is set aside. The accused are convicted for an offence under Section 302 read with 34 of the I.P.C. The acquittal in respect of the charges under Sections- 504 and 506 is however, confirmed.

26. As regards the sentence, in our view this is not a case which falls within the ambit of a rarest of rare case which would call for a death sentence. We have questioned the accused on the point of sentence. The

accused have nothing to say regarding the sentence.

27. In the circumstances, the accused are convicted under Section 302 read with 34 of the Indian Penal Code and are sentenced to suffer R.I. for life. Their bail bonds stand cancelled. They are directed to surrender forthwith. They will be entitled to the set off of any period of imprisonment already undergone in this case.

(R.M.S.KHANDEPARKAR, J.)

(R.S. MOHITE, J.)

FARAD CONTINUATION SHEET NO
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 40 OF 1993

The State of Maharashtra. ....Appellant.
Vs.
Arjun Dattaram Bhekare and ors. ....Respondents.

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	**Court's or Judge's orders**
	Ms. P.H. Kantharia, A.P.P. for the Appellant-State. Mr. Prakash Naik, Advocate for the Respondents. ..... **CORAM : R.M.S. KHANDEPARKAR & R.S. MOHITE, JJ.** **DATED : 6TH AUGUST,2004.** ..... ORAL JUDGEMENT:(Per R.S. Mohite,J.) OPERATIVE ORDER 1. Appeal is partly allowed and the Judgment and sentence passed by the learned Sessions Judge,

Ratnagiri on 6.11.1992 in Sessions Case No.48 of 1992 is partly set aside.

2. All the accused are convicted for committing the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to undergo R.I. for life.

. The acquittal of the accused for the offences punishable under Section 504 read with 34 and 506 of the Indian Penal Code by the Sessions Judge, Ratnagiri is however, confirmed.

3. The bail bonds of the accused to stand cancelled. They are

directed to surrender forthwith.

(R.M.S. KHANDEPARKAR, J.)

(R. S. MOHITE, J.)